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In re Application of	:	DECISION ON
Viksoe-Nielsen et al	:	
Application No.: 10/561,671	:	
PCT No.: PCT/DK2004/000456	:	
Int. Filing Date: 25 June 2004	:	PETITION UNDER
Priority Date: 25 June 2003	:	
Attorney's Docket No.: 10473.204-US	:	
For: STARCH PROCESS	:	37 CFR 1.10 (c)

This decision is in response to applicants' "PETITION UNDER 37 C.F.R. 1.10(c)" filed on 11 June 2008, requesting that the filing date of December 22, 2005 be changed to December 20, 2005 for the national stage submission for the above identified application. No fee is required for this petition.

BACKGROUND

On 22 December 2005, petitioner purportedly filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), and an executed declaration.

On 11 June 2008, applicants filed the present petition stating that the application was in fact deposited with the USPS on 20 December 2005 as evidenced by the USPS "date-in" section on the "Express Mail" label and the circular stamped on the "Express Mail" label indicating a date of 20 December 2005.

DISCUSSION

37 CFR 1.10(c) provides:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Applicant met items (2) and (3) but not item (1) under 37 CFR 1.10 (c).

The petition was not filed promptly since the application was filed on 22 December 2005 and the petition to correct the 371 date was filed on 11 June 2008. It is unclear why it took so long for applicant to file the petition. 37 CFR 1.10(c)(1).

A review of the application papers reveals that "Express Mail" Label No. EV611574355US was placed on the "Express Mail Certificate" prior to the original mailing by "Express Mail." CFR 1.10(c)(2). Finally, the copy of the customer receipt of "Express Mail" Label No. EV611574355US filed with the present petition identifies the "date in" as "12/20/08" and also it is stamped by the USPS with said date, which shows that the above application was submitted on December 20, 2005. 37 CFR 1.10(c)(3).


For the above reasons, it would not be appropriate to grant the petition under 37 CFR 1.10(c) at this time.

CONCLUSION

For reasons above, the petition under 37 CFR 1.10(c) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(c)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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